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KENNETH L. SCHROEDER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

KENNETH L. SCHROEDER,

Defendant.

Case No. C-07-3798-JW (HRL)

**STATEMENT IN COMPLIANCE WITH
CIVIL LOCAL RULE 37-2 REGARDING
DOCUMENTS SOUGHT FROM
SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP AND ITS INDIVIDUAL
ATTORNEYS**

Date: July 15, 2008
Time: 10:00 a.m.
Courtroom: 8
Judge: Magistrate Judge Howard R. Lloyd

1 Defendant Kenneth L. Schroeder respectfully submits this Statement in Compliance with
2 Civil Local Rule 37-2 Regarding Documents Sought from Skadden, Arps, Slate, Meagher &
3 Flom LLP and Its Individual Attorneys ("Skadden"). For ease of reference, Mr. Schroeder has
4 organized this statement to correspond to the five general categories of documents and testimony
5 identified in the Motion Of Kenneth L. Schroeder To Compel Further Responses To Discovery
6 Requests (Testimony And Documents) By (1) KLA-Tencor Corporation And (2) Skadden, Arps,
7 Slate, Meagher & Flom LLP, Attorneys For The Special Committee Of KLA's Board Of
8 Directors (the "Motion to Compel"): (1) documents and communications concerning historical
9 attorney communications about KLA's option granting and accounting practices; (2) original
10 notes and draft interview memoranda from Special Committee witness interviews; (3) documents
11 and communications relating to the Special Committee investigation shown to or discussed with
12 government or regulatory agencies; (4) all other documents and communications relating to the
13 Special Committee investigation; and (5) documents and communications shared with KLA's
14 outside auditors.

15 Skadden has refused to produce the documents and communications at issue in the Motion
16 to Compel, and to permit its individual attorneys to testify about those documents and
17 communications, on the basis of the attorney-client privilege and/or the work product doctrine.
18 Skadden has also refused to produce certain of the documents and communications that
19 Mr. Schroeder seeks on the ground that they have already been produced to him in this litigation
20 by the SEC.

21 By the Motion to Compel and this statement, Mr. Schroeder does not seek to compel
22 Skadden to re-produce documents that have already been produced to him by the SEC. Rather,
23 Mr. Schroeder seeks production of the documents that have been withheld from production to him
24 to date, as well as testimony relating to all of the documents and communications that Skadden
25 has withheld based on privilege assertions. The documents and testimony that Mr. Schroeder
26 seeks are vital to Mr. Schroeder's ability to fully defend himself, and, under the circumstances of
27 this case, all of Skadden's privilege claims are unfounded, either because no privilege or
28

1 protection ever attached or because KLA and Skadden have waived any applicable privilege or
2 protection.

3 **I. CATEGORY 2: ORIGINAL NOTES AND DRAFT MEMORANDA FROM**
4 **SPECIAL COMMITTEE INTERVIEWS**

5 **A. MR. SCHROEDER'S PRODUCTION DEMAND NO. 7 TO SKADDEN**

6 Production Demand No. 7

7 All DOCUMENTS CONCERNING notes and/or memoranda of witness interviews
8 WHICH YOU conducted on behalf of the SPECIAL COMMITTEE, including but not limited to:
9 (1) YOUR handwritten notes; (2) all drafts of interview memoranda, whether dictated,
10 handwritten, typed or otherwise memorialized; (3) the metadata of any electronically created and
11 edited electronic DOCUMENTS showing when they were edited; (4) all exhibits or other
12 DOCUMENTS referenced in any such memoranda or notes; and (5) all DOCUMENTS showing
13 edits of such memoranda or notes.

14 Skadden's Response to Production Demand No. 7

15 Skadden incorporates by reference its General Objections as though fully set forth herein.
16 Skadden additionally objects to this Request to the extent that it seeks the production of
17 documents that are within Schroeder's possession, custody or control, or that are equally as
18 accessible to Schroeder as to Skadden. Skadden further objects to this Request to the extent that
19 it seeks the discovery of information that is neither relevant to the subject matter of this action nor
20 reasonably calculated to lead to the discovery of admissible evidence. Skadden additionally
21 objects to this Request to the extent that it is overbroad and unduly burdensome. Skadden further
22 objects to this Request to the extent that it seeks the production of documents that are subject to
23 any applicable privilege, doctrine or immunity, including without limitation the attorney-client
24 privilege, the attorney work product doctrine or the right of privacy. Skadden additionally objects
25 to this Request to the extent that it is vague and ambiguous with respect to the terms
26 "CONCERNING," "notes", "memoranda", "conducted", "on behalf of", "drafts", "memorialized",
27 "metadata", "electronic", "edited", "referenced" and "showing." Skadden objects that the use of
28 these vague and ambiguous terms in conjunction with this Request requires Skadden to speculate

1 as to the nature and scope of the documents sought. Requiring Skadden to so speculate renders
2 the Request overbroad, unduly burdensome, oppressive and not reasonably calculated to lead to
3 the discovery of admissible evidence.

4 Based on Skadden's review of the SEC's initial disclosures to Schroeder, pursuant to
5 F.R.C.P. 26(a)(1), the SEC has already produced the final version of all witness interview
6 memoranda prepared by Skadden (the "Interview Memoranda") as well as all the document or
7 exhibits referenced therein. Because such documents are already in Schroeder's possession,
8 custody or control, it would be unduly burdensome and an improper use of the discovery process
9 to compel Skadden to produce such documents in this case. Accordingly, Skadden will not
10 produce any of the Interview Memoranda or the documents or exhibits referenced therein to
11 Schroeder as the SEC has already produced such documents to Schroeder and they are,
12 accordingly, equally accessible to Schroeder as to Skadden. Skadden also refuses to produce any
13 of the Interview Memoranda, or any of the privileged documents or exhibits attached thereto, on
14 the additional grounds that such documents are protected from discovery by the attorney client
15 privilege, the work product doctrine, or other applicable privileges.

16 Skadden will produce the electronic document metadata concerning the Interview
17 Memoranda, which reflect information such as "date last modified," "date created," and "date
18 printed," but do not disclose information protected by the work product doctrine, or any other
19 applicable privileges, doctrines or immunities, such as the substance of any revisions or
20 amendments made to the Interview Memoranda.

21 Skadden will refuse to produce all other documents responsive to this Request on the
22 grounds that they are protected by the attorney client privilege, the work product doctrine or other
23 applicable privileges or immunities.

24 Mr. Schroeder's Entitlement to Documents Responsive to Production Demand No. 7

25 As explained in the Motion to Compel, Mr. Schroeder is entitled to all documents
26 responsive to Production Demand No. 7 that Skadden has withheld based on the attorney-client
27 privilege and/or work product doctrine because (1) KLA and Skadden cannot establish that the
28 attorney-client privilege or work product protection applies to any such documents, because they

1 were created with the intent to disclose them to the government; and (2) KLA and Skadden
 2 waived any applicable privilege or protection as to the subject matter of the Special Committee
 3 investigation when they disclosed to the SEC witness interview memoranda and other purportedly
 4 privileged materials and/or work product created during the Special Committee investigation.

5 **II. CATEGORY 3: DOCUMENTS RELATING TO THE SPECIAL COMMITTEE**
 6 **INVESTIGATION SHOWN TO OR DISCUSSED WITH THE SEC OR OTHER**
 7 **AGENCIES**

8 **A. MR. SCHROEDER'S PRODUCTION DEMAND NO. 1 TO SKADDEN**

9 Production Demand No. 1

10 All DOCUMENTS CONCERNING the SPECIAL COMMITTEE INVESTIGATION
 11 and/or RESTATEMENT which YOU transmitted to, read from (in whole or in part), summarized,
 12 presented to or received from the SEC.

13 Skadden's Response to Production Demand No. 1

14 Skadden incorporates by reference its General Objections as though fully set forth herein.
 15 Skadden additionally objects to this Request to the extent that it seeks the production of
 16 documents that are within Schroeder's possession, custody or control, or that are equally as
 17 accessible to Schroeder as to Skadden. Skadden further objects to this Request to the extent that
 18 it seeks the discovery of information that is neither relevant to the subject matter of this action nor
 19 reasonably calculated to lead to the discovery of admissible evidence. Skadden additionally
 20 objects to this Request to the extent that it is overbroad and unduly burdensome. Skadden further
 21 objects to this Request to the extent that it seeks the production of documents that are subject to
 22 any applicable privilege, doctrine or immunity, including without limitation the attorney-client
 23 privilege, the attorney work product doctrine or the right of privacy. Skadden additionally objects
 24 to this Request to the extent that it is vague and ambiguous with respect to the terms
 25 "CONCERNING," "transmitted", "read from", "summarized", "presented" and "received."
 26 Skadden objects that the use of these vague and ambiguous terms in conjunction with this
 27 Request requires Skadden to speculate as to the nature and scope of the documents sought.
 28 Requiring Skadden to so speculate renders the Request overbroad, unduly burdensome,
 oppressive and not reasonably calculated to lead to the discovery of admissible evidence.

1 Based on Skadden's review of the SEC's Initial Disclosures, the SEC has already
2 produced substantially all of the documents responsive to this Request to Schroeder, pursuant to
3 F.R.C.P. 26(a)(1). Because these documents are already in Schroeder's possession, custody or
4 control, it would be unduly burdensome and an improper use of the discovery process to compel
5 Skadden to produce such documents in this case. Accordingly, Skadden will not produce any
6 documents responsive to this Request which the SEC has already produced to Schroeder as such
7 documents are already in Schroeder's possession, custody or control, and therefore are equally
8 accessible to Schroeder as to Skadden. Skadden also refuses to produce many of these responsive
9 documents on the additional grounds that they are protected by the attorney client privilege, the
10 work product doctrine, and/or other applicable privileges.

11 To the extent that Skadden has any responsive documents that were not included in the
12 SEC's Initial Disclosures to Schroeder, and are not protected by the attorney-client privilege, the
13 work product doctrine or some other applicable privilege, Skadden will produce such documents
14 to Schroeder to the extent that they do not contain any trade secrets or confidential or
15 competitively sensitive business information. To the extent that such responsive, non-privileged
16 documents do contain any trade secrets or confidential or competitively sensitive business
17 information, Skadden will produce them to Schroeder subject to the entry by the court of a
18 confidentiality order prohibiting the parties from disclosing such documents or information to
19 third parties or using them for purposes unrelated to this Litigation. However, Skadden currently
20 believes that all non-privileged responsive documents that were produced to the SEC have
21 already been produced to Schroeder pursuant to the SEC's Initial Disclosures.

22 Mr. Schroeder's Entitlement to Documents Responsive to Production Demand No. 1

23 As explained in the Motion to Compel, Mr. Schroeder is entitled to all documents
24 responsive to Production Demand No. 1 that Skadden has withheld based on the attorney-client
25 privilege and/or work product doctrine because (1) KLA and Skadden cannot establish that the
26 attorney-client privilege or work product protection applies to any such documents, because they
27 were created with the intent to disclose them to the government; (2) KLA and Skadden waived
28 any applicable privilege or protection as to the subject matter of the Special Committee

1 investigation when they disclosed to the SEC witness interview memoranda and other purportedly
2 privileged materials and/or work product created during the Special Committee investigation; and
3 (3) waiver applies irrespective of whether KLA or Skadden physically produced such documents
4 to the SEC or disclosed the materials orally or by other means.

5 **B. MR. SCHROEDER'S PRODUCTION DEMAND NO. 2 TO SKADDEN**

6 Production Demand No. 2

7 All DOCUMENTS CONCERNING the SPECIAL COMMITTEE INVESTIGATION
8 and/or RESTATEMENT which YOU transmitted to, read from (in whole or in part), summarized,
9 presented to or received from the DOJ.

10 Skadden's Response to Production Demand No. 2

11 Skadden incorporates by reference its General Objections as though fully set forth herein.
12 Skadden additionally objects to this Request to the extent that it seeks the production of
13 documents that are within Schroeder's possession, custody or control, or that are equally as
14 accessible to Schroeder as to Skadden. Skadden further objects to this Request to the extent that
15 it seeks the discovery of information that is neither relevant to the subject matter of this action nor
16 reasonably calculated to lead to the discovery of admissible evidence. Skadden additionally
17 objects to this Request to the extent that it is overbroad and unduly burdensome. Skadden further
18 objects to this Request to the extent that it seeks the production of documents that are subject to
19 any applicable privilege, doctrine or immunity, including without limitation the attorney-client
20 privilege, the attorney work product doctrine or the right of privacy. Skadden additionally objects
21 to this Request to the extent that it is vague and ambiguous with respect to the terms
22 "CONCERNING," "transmitted", "read from", "summarized", "presented" and "received."
23 Skadden objects that the use of these vague and ambiguous terms in conjunction with this
24 Request requires Skadden to speculate as to the nature and scope of the documents sought.
25 Requiring Skadden to so speculate renders the Request overbroad, unduly burdensome,
26 oppressive and not reasonably calculated to lead to the discovery of admissible evidence.

27 Based on Skadden's review of the SEC's Initial Disclosures, the SEC has already
28 produced substantially all of the documents responsive to this Request to Schroeder, pursuant to

1 F.R.C.P. 26(a)(1). Because these documents are already in Schroeder's possession, custody or
2 control, it would be unduly burdensome and an improper use of the discovery process to compel
3 Skadden to produce such documents in this case. Accordingly, Skadden will not produce any
4 documents responsive to this Request which the SEC has already produced to Schroeder as such
5 documents are already in Schroeder's possession, custody or control, and therefore are equally
6 accessible to Schroeder as to Skadden. Skadden also refuses to produce many of these responsive
7 documents on the additional grounds that they are protected by the attorney client privilege, the
8 work product doctrine, and/or other applicable privileges.

9 To the extent that Skadden has any responsive documents that were not included in the
10 SEC's Initial Disclosures to Schroeder, and are not protected by the attorney-client privilege, the
11 work product doctrine or some other applicable privilege, Skadden will produce such documents
12 to Schroeder to the extent that they do not contain any trade secrets or confidential or
13 competitively sensitive business information. To the extent that such responsive, non-privileged
14 documents do contain any trade secrets or confidential or competitively sensitive business
15 information, Skadden will produce them to Schroeder subject to the entry by the court of a
16 confidentiality order prohibiting the parties from disclosing such documents or information to
17 third parties or using them for purposes unrelated to this Litigation. However, Skadden currently
18 believes that all non-privileged responsive documents that were produced to the DOJ have
19 already been produced to Schroeder pursuant to the SEC's Initial Disclosures.

20 Mr. Schroeder's Entitlement to Documents Responsive to Production Demand No. 2

21 As explained in the Motion to Compel, Mr. Schroeder is entitled to all documents
22 responsive to Production Demand No. 2 that Skadden has withheld based on the attorney-client
23 privilege and/or work product doctrine because (1) KLA and Skadden cannot establish that the
24 attorney-client privilege or work product protection applies to any such documents, because they
25 were created with the intent to disclose them to the government; (2) KLA and Skadden waived
26 any applicable privilege or protection as to the subject matter of the Special Committee
27 investigation when they disclosed to the SEC witness interview memoranda and other purportedly
28 privileged materials and/or work product created during the Special Committee investigation; and

(3) waiver applies irrespective of whether KLA or Skadden physically produced such documents to the SEC or disclosed the materials orally or by other means.

C. MR. SCHROEDER'S PRODUCTION DEMAND NO. 9 TO SKADDEN

Production Demand No. 9

All DOCUMENTS summarizing any interactions which YOU attended with representatives of the SEC, DOJ and/or NASDAQ concerning the SPECIAL COMMITTEE INVESTIGATION and/or RESTATEMENT including notes or memoranda of any such interaction and any presentations that YOU made therein.

Skadden's Response to Production Demand No. 9

Skadden incorporates by reference its General Objections as though fully set forth herein. Skadden further objects to this Request to the extent that it seeks the discovery of information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Skadden additionally objects to this Request to the extent that it is overbroad and unduly burdensome. Skadden further objects to this Request to the extent that it seeks the production of documents that are subject to any applicable privilege, doctrine or immunity, including without limitation the attorney-client privilege, the attorney work product doctrine or the right of privacy. Skadden additionally objects to this Request to the extent that it is vague and ambiguous with respect to the terms "CONCERNING," "summarizing", "interactions", "attended", "representatives", "notes", "memoranda" and "presentations." Skadden objects that the use of these vague and ambiguous terms in conjunction with this Request requires Skadden to speculate as to the nature and scope of the documents sought. Requiring Skadden to so speculate renders the Request overbroad, unduly burdensome, oppressive and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of the above objections, Skadden will produce any documents responsive to this Request, to the extent they exist, which are not protected by the work product doctrine, the attorney client privilege, or any other applicable privilege or immunity. However, Skadden believes that substantially all, if not all, responsive documents, if any, will be protected by the work product doctrine, the attorney client privilege, or other

1 applicable privileges, and will not produce any such documents.

2 Mr. Schroeder's Entitlement to Documents Responsive to Production Demand No. 9

3 As explained in the Motion to Compel, Mr. Schroeder is entitled to all documents
4 responsive to Production Demand No. 9 that Skadden has withheld based on the attorney-client
5 privilege and/or work product doctrine because (1) KLA and Skadden cannot establish that the
6 attorney-client privilege or work product protection applies to any such documents, because they
7 were created with the intent to disclose them to the government; (2) KLA and Skadden waived
8 any applicable privilege or protection as to the subject matter of the Special Committee
9 investigation when they disclosed to the SEC witness interview memoranda and other purportedly
10 privileged materials and/or work product created during the Special Committee investigation; and
11 (3) waiver applies irrespective of whether KLA or Skadden physically produced such documents
12 to the SEC or disclosed the materials orally or by other means.

13 **III. CATEGORY 4: ALL DOCUMENTS RELATING TO THE SPECIAL**
14 **COMMITTEE INVESTIGATION**

15 **A. MR. SCHROEDER'S PRODUCTION DEMAND NO. 6 TO SKADDEN**

16 Production Demand No. 6

17 All DOCUMENTS CONCERNING the SPECIAL COMMITTEE INVESTIGATION
18 and/or RESTATEMENT which YOU transmitted to, read from (in whole or in part), summarized,
19 presented to or received from MORGAN LEWIS.

20 Skadden's Response to Production Demand No. 6

21 Skadden incorporates by reference its General Objections as though fully set forth herein.
22 Skadden additionally objects to this Request to the extent that it seeks the production of
23 documents that are within Schroeder's possession, custody or control, or that are equally as
24 accessible to Schroeder as to Skadden. Skadden additionally objects to this Request to the extent
25 that it seeks the production of documents that are within Schroeder's possession, custody or
26 control, or that are equally as accessible to Schroeder as to Skadden. Skadden further objects to
27 this Request to the extent that it seeks the discovery of information that is neither relevant to the
28 subject matter of this action nor reasonably calculated to lead to the discovery of admissible

1 evidence. Skadden additionally objects to this Request to the extent that it is overbroad and
2 unduly burdensome. Skadden further objects to this Request to the extent that it seeks the
3 production of documents that are subject to any applicable privilege, doctrine or immunity,
4 including without limitation the attorney-client privilege, the attorney work product doctrine or
5 the right of privacy. Skadden additionally objects to this Request to the extent that it is vague and
6 ambiguous with respect to the terms “CONCERNING,” “transmitted,” “read from”,
7 “summarized”, “presented”, and “received.” Skadden objects that the use of these vague and
8 ambiguous terms in conjunction with this Request requires Skadden to speculate as to the nature
9 and scope of the documents sought. Requiring Skadden to so speculate renders the Request
10 overbroad, unduly burdensome, oppressive and not reasonably calculated to lead to the discovery
11 of admissible evidence.

12 Skadden will not produce documents responsive to this Request because any such
13 documents are protected by the attorney-client privilege and/or the work product doctrine.

14 Mr. Schroeder’s Entitlement to Documents Responsive to Production Demand No. 6

15 As explained in the Motion to Compel, Mr. Schroeder is entitled to all documents
16 responsive to Production Demand No. 6 that Skadden has withheld based on the attorney-client
17 privilege and/or work product doctrine because (1) KLA and Skadden cannot establish that the
18 attorney-client privilege or work product protection applies to any such documents, because they
19 were created with the intent to disclose them to the government; and (2) KLA and Skadden
20 waived any applicable privilege or protection as to the subject matter of the Special Committee
21 investigation when they disclosed to the SEC witness interview memoranda and other purportedly
22 privileged materials and/or work product created during the Special Committee investigation.

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B. MR. SCHROEDER'S PRODUCTION DEMAND NO. 11 TO SKADDENProduction Demand No. 11

All DOCUMENTS CONCERNING THE COMPANY'S SEC filings that refer to or discuss the SPECIAL COMMITTEE INVESTIGATION and/or RESTATEMENT, including drafts which YOU prepared, edited or commented upon.

Skadden's Response to Production Demand No. 11

Skadden incorporates by reference its General Objections as though fully set forth herein. Skadden additionally objects to this Request to the extent that it seeks the production of documents that are within Schroeder's possession, custody or control, or that are equally as accessible to Schroeder as to Skadden. Skadden further objects to this Request to the extent that it seeks the discovery of information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Skadden additionally objects to this Request to the extent that it seeks the production of documents that are subject to any applicable privilege, doctrine or immunity, including without limitation the attorney-client privilege, the attorney work product doctrine or the right of privacy. Skadden additionally objects to this Request to the extent that it is vague and ambiguous with respect to the terms "CONCERNING," "filings", refer", "discuss", "drafts", "prepared", "edited" and "commented." Skadden objects that the use of these vague and ambiguous terms in conjunction with this Request requires Skadden to speculate as to the nature and scope of the documents sought. Requiring Skadden to so speculate renders the Request overbroad, unduly burdensome, oppressive and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving any of the above objections, Skadden will produce any documents responsive to this Request which are not protected by the work product doctrine, the attorney-client privilege, or any other applicable privilege or immunity. However, Skadden does not believe it has any such non-privileged documents.

1 Mr. Schroeder's Entitlement to Documents Responsive to Production Demand No. 11

2 As explained in the Motion to Compel, Mr. Schroeder is entitled to all documents
3 responsive to Production Demand No. 11 that Skadden has withheld based on the attorney-client
4 privilege and/or work product doctrine because (1) KLA and Skadden cannot establish that the
5 attorney-client privilege or work product protection applies to any such documents, because they
6 were created with the intent to disclose them to the government; and (2) KLA and Skadden
7 waived any applicable privilege or protection as to the subject matter of the Special Committee
8 investigation when they disclosed to the SEC witness interview memoranda and other purportedly
9 privileged materials and/or work product created during the Special Committee investigation.

10 **C. MR. SCHROEDER'S PRODUCTION DEMAND NO. 14 TO SKADDEN**

11 Production Demand No. 14

12 All DOCUMENTS CONCERNING the SPECIAL COMMITTEE INVESTIGATION
13 which YOU created or edited, which related to the findings of the SPECIAL COMMITTEE.

14 Skadden's Response to Production Demand No. 14

15 Skadden incorporates by reference its General Objections as though fully set forth herein.
16 Skadden additionally objects to this Request to the extent that it seeks the production of
17 documents that are within Schroeder's possession, custody or control, or that are equally as
18 accessible to Schroeder as to Skadden. Skadden additionally objects to this Request to the extent
19 that it seeks the production of documents that are within Schroeder's possession, custody or
20 control, or that are equally as accessible to Schroeder as to Skadden. Skadden further objects to
21 this Request to the extent that it seeks the discovery of information that is neither relevant to the
22 subject matter of this action nor reasonably calculated to lead to the discovery of admissible
23 evidence. Skadden additionally objects to this Request to the extent that it is overbroad and
24 unduly burdensome. Skadden further objects to this Request to the extent that it seeks the
25 production of documents that are subject to any applicable privilege, doctrine or immunity,
26 including without limitation the attorney-client privilege, the attorney work product doctrine or
27 the right of privacy. Skadden additionally objects to this Request to the extent that it is vague and
28 ambiguous with respect to the terms "CONCERNING," "created", "edited" and "findings."

1 Skadden objects that the use of these vague and ambiguous terms in conjunction with this
 2 Request requires Skadden to speculate as to the nature and scope of the documents sought.
 3 Requiring Skadden to so speculate renders the Request overbroad, unduly burdensome,
 4 oppressive and not reasonably calculated to lead to the discovery of admissible evidence.

5 Subject to and without waiving any of the above objections, Skadden will produce any
 6 documents responsive to this Request, which are not protected by the work product doctrine, the
 7 attorney client privilege, or any other applicable privilege or immunity.

8 Mr. Schroeder's Entitlement to Documents Responsive to Production Demand No. 14

9 As explained in the Motion to Compel, Mr. Schroeder is entitled to all documents
 10 responsive to Production Demand No. 14 that Skadden has withheld based on the attorney-client
 11 privilege and/or work product doctrine because (1) KLA and Skadden cannot establish that the
 12 attorney-client privilege or work product protection applies to any such documents, because they
 13 were created with the intent to disclose them to the government; and (2) KLA and Skadden
 14 waived any applicable privilege or protection as to the subject matter of the Special Committee
 15 investigation when they disclosed to the SEC witness interview memoranda and other purportedly
 16 privileged materials and/or work product created during the Special Committee investigation.

17 **IV. CATEGORY 5: DOCUMENTS SHARED WITH KLA'S OUTSIDE AUDITORS.**

18 **A. MR. SCHROEDER'S PRODUCTION DEMAND NO. 4 TO SKADDEN**

19 Production Demand No. 4

20 All DOCUMENTS CONCERNING the SPECIAL COMMITTEE INVESTIGATION
 21 and/or RESTATEMENT which YOU transmitted to, read from (in whole or in part), summarized,
 22 presented to or received from PWC.

23 Skadden's Response to Production Demand No. 4

24 Skadden incorporates by reference its General Objections as though fully set forth herein.
 25 Skadden additionally objects to this Request to the extent that it seeks the production of
 26 documents that are within Schroeder's possession, custody or control, or that are equally as
 27 accessible to Schroeder as to Skadden. Skadden further objects to this Request to the extent that
 28 it seeks the discovery of information that is neither relevant to the subject matter of this action nor

1 reasonably calculated to lead to the discovery of admissible evidence. Skadden additionally
2 objects to this Request to the extent that it is overbroad and unduly burdensome. Skadden further
3 objects to this Request to the extent that it seeks the production of documents that are subject to
4 any applicable privilege, doctrine or immunity, including without limitation the attorney-client
5 privilege, the attorney work product doctrine or the right of privacy. Skadden additionally objects
6 to this Request to the extent that it is vague and ambiguous with respect to the terms
7 “CONCERNING,” “transmitted”, “read from”, “summarized”, “presented” and “received.”
8 Skadden objects that the use of these vague and ambiguous terms in conjunction with this
9 Request requires Skadden to speculate as to the nature and scope of the documents sought.
10 Requiring Skadden to so speculate renders the Request overbroad, unduly burdensome,
11 oppressive and not reasonably calculated to lead to the discovery of admissible evidence.

12 Skadden will not produce documents responsive to this Request because any such
13 documents are protected by the work product doctrine and/or the attorney-client privilege.

14 Mr. Schroeder’s Entitlement to Documents Responsive to Production Demand No. 4

15 As explained in the Motion to Compel, Mr. Schroeder is entitled to all documents
16 responsive to Production Demand No. 4 that Skadden has withheld based on the attorney-client
17 privilege and/or work product doctrine because (1) KLA and Skadden have not established the
18 applicability of any privilege or protection; and (2) KLA and Skadden waived any applicable
19 privilege or protection as to the documents requested by disclosing them to PwC.
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1 Dated: June 9, 2008

Respectfully submitted,

2 DLA PIPER US LLP

3
4 By: /s/Jeffrey B. Coopersmith

5 SHIRLI FABBRI WEISS (Bar No. 079225)

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